

**The Future of Long-Term Care and Medicaid**  
**Small Business Roundtable**  
**Washington County Commissioners Meeting Room, Hagerstown, MD**  
**100 West Washington Street**  
**2nd floor, room 227**  
**July 10, 2006**  
**1:00 – 4:00**

*Testimony submitted by S. Anthony McCann, Secretary, Maryland Department of Health and Mental Hygiene*

**Questions to be Answered by the Hearing**

[Panel 1]: While Medicare and Medicaid already are burdened by high costs, public programs designed to meet the needs of the elderly will become increasingly strained in the years ahead. One of the crucial questions facing policymakers, therefore, is how to create an appropriate balance between public and private responsibilities – between the obligation of government to provide a safety net for those who need it and the obligation of citizens to provide for themselves to the extent they are able to do so.

1. *Do you think the Deficit Reduction Act helps move us towards a better balance between these responsibilities?*

Yes. The DRA's mandatory long-term care provisions focus on making it more difficult for seniors to inappropriately transfer assets in order to qualify for Medicaid.

For instance, if individuals inappropriately transfer assets for less than their fair market value anytime within five years before applying for Medicaid, penalties must be imposed. The penalties would delay Medicaid payments for long-term care expenses. Previously states examined only a three year period. Another change is that penalties now start on the day that individuals are determined eligible or when the transfer happened, whichever is later. Previously penalties started when the transfer occurred, oftentimes before the individual applied for Medicaid. The result was that there was often no impact on Medicaid payments for the patient's long term care and that the asset was successfully shielded. Hardship waiver, of course, provisions allow states the flexibility to exempt individuals from penalties, when warranted.

A second provision of the DRA requires that states consider home equity when determining a nursing home resident's Medicaid eligibility status. Prior to the DRA, a nursing home resident could own a home and remain eligible for Medicaid. Now a resident is ineligible for Medicaid nursing home payments, if that person retains more than a \$500,000 equity-stake in a house. States can opt to raise this limit to \$750,000. By considering an individual's home equity, the DRA provides an additional safeguard to ensure that Medicaid is the payer of last resort while ensuring that undue hardship is not placed on spouses or a minor or disabled child.

Both of these provisions demonstrate the awareness that there needs to be a balance between making individuals more accountable without putting their health care and other needs at risk.

[Panel 1]: Expansion of the long-term care insurance market is especially important. For patients, expanding the market will bring about increased long-term care funding stability and the concomitant benefit of higher quality care. For the federal and state governments and for taxpayers, the inherent benefit will be reduced financial and budgetary pressure on Medicaid-financed long term care.

The insurance model promotes more individual choice—and can help keep patients out of facilities if their care needs can be met in a less restrictive setting. It is a fact that most individuals would prefer to receive their care at home. This is a demand that will continue, and having one's own insurance provides more choices and more freedom.

1. *What could be done to decrease public funding and increase private funding through such mechanisms as long-term care insurance?*

The DRA permits all states to participate in the Long-Term Care Partnership Program, which protects individuals' assets in exchange for purchasing long-term care insurance. For every dollar an individual is insured, the individual can protect the same amount in resources; there is no limit on the amount.

A recent letter from the National Governors Association (NGA) explains that the Long-Term Care Partnership Program may not provide sufficient incentive to encourage individuals to purchase long-term care insurance and I remain concerned that we are placing too much faith in this mechanism which, to date, has not generated a great deal of consumer interest.

[Tony McCann]:

1. *What were the pre- Deficit Reduction Act effects upon the Maryland state government and Maryland taxpayers by the increases in Medicaid-financing of long term care?*

Maryland has felt for a long time that it needed to reform how long-term care services are delivered in Maryland and to that end has an application for a waiver for a long term care managed care program pending before the federal government. In order to address increasing expenditures in the Medicaid program during the recent budget crisis in the State, Maryland implemented a number of cost containment initiatives most of which focused on reducing provider rate increases.

2. *Do you support the changes made by the Deficit Reduction Act?*

The Deficit Reduction Act closes loopholes, particularly in the areas of asset transfers, exploited by some individuals while still allowing states to make exceptions for others who do not divest their assets in order become Medicaid eligible. Also, once

individuals become eligible for Medicaid, the DRA offers useful options such as through accessing community services instead of institutional services.

3. *Are there other changes you would recommend?*

Yes. A recent letter from the National Governors Association (NGA) outlines other changes. We support the NGA letter and attach a copy to this submission.

4. *What will likely be the impact to Maryland because of the changes in the Deficit Reduction Act?*

We anticipate that the impact caused by the changes mandated in the DRA will improve our ability to ensure Medicaid is for low income Marylanders. Maryland implemented many of the DRA's mandatory long-term care eligibility changes in the late 1980's, including partial-month penalty periods and hardship waivers. The three key changes new to Maryland that we expect will have an impact on our system include: (1) altering the timeframe of Medicaid eligibility penalties; (2) increasing the look-back period from three to five years; and (3) limiting the amount of equity housing disregards considered in Medicaid eligibility determinations.

[Tony McCann and Grace-Marie Turner]: Both of you are members of the President's Medicaid Commission.

1. *What is the purpose of this commission?*

The Commission was created by Congress. Its members were selected by Secretary Leavitt. The purpose is to study Medicaid, and to make recommendations on whether the overall Medicaid program should be modified to reflect changes that have occurred since Medicaid was created in 1965. Secretary Leavitt also asked the Commission to focus particular attention on Long Term Care issues.

2. *What does it hope to accomplish?*

The Commission intends to make recommendations to Secretary Leavitt on important changes in federal law and policy to assure Medicaid's long-range viability and sustainability. The Commission also may make recommendations in other areas of federal law and policy, such as health information technology, where the federal government should use its purchasing power in Medicaid to drive important changes in the overall health care system.

[Panel 1 (Dennis Smith and Tony McCann)]: There were changes in the Deficit Reduction Act concerning the transfer of assets.

1. *Did the Deficit Reduction Act make any changes in the evaluation of the intent of gifts to determine eligibility for Medicaid?*

No. Maryland implemented these changes prior to the DRA. For instance, Maryland assumes that a transfer of assets was made to qualify an individual for

Medicaid, however the rules do provide for hardship waivers under certain circumstances.

2. *Will gifts of money or property to a loved one for simple things such as paying debts, college costs, helping with family medical bills, routine Christmas and birthday presents or donations to their church or other charities in amounts as low as \$1, trigger penalties regarding Medicaid eligibility?*

The federal requirements do not allow states to establish minimum limits for examining resources. Maryland, however, is looking for payments where the perceived intent is to circumvent the eligibility rules. *De minimus* amounts, reasonable gifts, or routine donations do not create anomalies in one's financial condition and normally would not trigger the penalty provisions. In circumstances where a one-time payment is made but equity requires not applying the penalties, Maryland can utilize its hardship waiver provision.

3. *Could you give examples of the type of gifts that would and would not trigger a penalty?*

The penalty provisions are evaluated on a case-by-case basis, although Maryland views a one-time grant of substantially all of one's assets to be suspect and likely would trigger the penalty. Of course, the hardship waiver provision would be available when necessary.

4. *Will the burden be on the senior citizen to prove that his intent was not to qualify for Medicaid?*

The decision on whether penalties apply in a particular case rests with Maryland. With respect to a hardship, the senior citizen, who is the person best positioned to provide the documentation and justification supporting a special exception.

5. *Do senior citizens have to maintain records for all of their gifts?*

There is no formal requirement that senior citizens maintain records for *all* of their gifts, however doing so may make it easier to argue for the grant of a waiver, if necessary. (Documentation always needs to be provided for significant gifts.)

6. *What kind of records do senior citizens need to maintain to demonstrate their intent?*

As the penalty provisions are evaluated on a case-by-case basis, the kind of records senior citizens need to maintain to demonstrate their intent will vary. However, clearly they should retain formal bank records and other financial data.

[Panel 1 (Dennis Smith and Tony McCann)]: There seems to be no exceptions for small gifts, with the Deficit Reduction Act stating that any "uncompensated transfer" is subject to a penalty.

1. *Is this correct?*

As written, the law appears not to include a *de minimus* exception. Maryland has no intention of enforcing these provisions vis-à-vis small gifts, however, because of the inability to identify and track these payments in a realistic and practical manner.

2. *How will this be applied?*

Maryland will apply the penalty provisions on a case-by-case basis and, again, Maryland is looking for anomalies in financial data and does not intend to focus on *de minimus* amounts.

[Panel 1]: Under prior law, the penalty began running as of the date of the gift, which means in most instances the penalty expired at the end of the month in which the gift was made, therefore not affecting a citizen's subsequent application for Medicaid. Now, if a Medicaid applicant's gift triggers a penalty, the penalty does not begin running until the person has applied for Medicaid. All gifts made within the five years prior to going into a nursing home are cumulated.

1. *If the penalty does not begin running until citizens have exhausted all of their money, and they are ineligible for Medicaid, how will they pay for their care?*

Penalties are only applied to individuals who made inappropriate transfers in order to become eligible for Medicaid. In such cases, these individuals would not qualify for a hardship waiver.

[Panel 1 ((Dennis Smith and Tony McCann))]: The Deficit Reduction Act codified the law regarding hardship waivers.

1. *Could you explain who is eligible for hardship waivers?*

Anyone that is assigned a penalty is eligible for a hardship waiver. That individual, however, carries the burden to justify their need for a waiver.

2. *How do you obtain hardship waivers?*

In general, hardship waivers are granted on a case-by-case basis. The particular process for requesting a waiver requires that the individual work with their eligibility case worker. If unresolved, opportunities exist for further review by the Department of Health and Mental Hygiene and through a formal appeal process.

3. (Dennis Smith): Can you discuss the timeline for the Department of Health and Human Services (HHS) to provide guidance that will facilitate the states providing hardship waivers to seniors who need them?

[Panel 1]: While there is little doubt that private sector financing can play a bigger role than it plays now, it seems unlikely that private financing can become the dominant source of funding for long-term care without more initiatives than are currently contemplated. Federal policymakers bear a special responsibility to improve Medicaid for the majority of people who need and use long-term services.

*Do any of you have recommendations to Congress to improve incentives for private sector financing?*

We encourage reform efforts that would make it easier for a senior to execute a reverse mortgages. In particular, the application process needs to be easy for seniors and we recommend reexamining the administrative requirements associated with such mortgages, *i.e.*, reducing required paperwork and simplifying regulatory forms. In addition, we suggest reducing the upfront costs associated with obtaining reverse mortgages. Tackling these issues should, we believe, promote the use of these useful financial tools.